

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE GENERAL HOSPITAL
CORPORATION and DANA-FARBER
CANCER INSTITUTE, INC.,

Plaintiffs,

v.

ESOTERIX GENETIC LABORATORIES,
LLC and LABORATORY CORPORATION
OF AMERICA HOLDINGS,

Defendants.

C.A. No. 1:18-cv-11360-IT

**DEFENDANTS' MOTION TO DISMISS PLAINTIFFS'
THIRD AMENDED COMPLAINT**

Defendants Esoterix Genetic Laboratories, LLC (“EGL”) and Laboratory Corporation of America Holdings (“Labcorp”) (collectively, “Defendants”), hereby move to dismiss the claims asserted by Plaintiffs The General Hospital Corporation and Dana-Farber Cancer Institute, Inc. (collectively, “Plaintiffs”) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As grounds for their motion, Defendants state that Plaintiffs released their claims to the royalties at issue in connection with the settlement of a prior litigation, and fail to allege that Defendants’ compliance with terms of that settlement gives rise to a claim for breach of the implied covenant of good faith and fair dealing, unjust enrichment, violation of M.G.L. Chapter 93A §§ 2 and 11, or reformation of contract. As further grounds and also in support of their motion, Defendants incorporate their accompanying Memorandum of Law filed herewith.

WHEREFORE, for the reasons set forth above and in their accompanying Memorandum of Law, Defendants respectfully request that the Court grant their Motion and that Plaintiffs’ claims against them be dismissed with prejudice.

Dated: December 15, 2021
Boston, MA

Respectfully submitted,

ESOTERIX GENETIC LABORATORIES,
LLC and LABORATORY
CORPORATION OF AMERICA

By their Attorneys,

CAMPBELL CAMPBELL EDWARDS &
CONROY, P.C.

/s/ Christopher R. Howe

James M. Campbell (BBO #541882)
jmcampbell@campbell-trial-lawyers.com
Christopher R. Howe (BBO #652445)
chowe@campbell-trial-lawyers.com
One Constitution Center, 3rd Floor
Boston, MA 02129
Tel: (617) 241-3000
Fax: (617) 241-5115

KELLEY DRYE & WARREN LLP
Robert I. Steiner (admitted *pro hac vice*)
rsteiner@kelleydrye.com
Jaclyn M. Metzinger (admitted *pro hac vice*)
jmetzinger@kelleydrye.com
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Tel: (212) 808-7800
Fax: (212) 808-7897

LOCAL RULE 7.1(D) REQUEST FOR ORAL ARGUMENT

Defendants respectfully request oral argument on their Motion pursuant to Local Rule 7.1(d) in order to assist the Court in resolving the issues raised.

LOCAL RULE 7.1(a)(2) CERTIFICATION

I, Jaclyn M. Metzinger, counsel for Defendants, hereby certify that, on December 3, 2021, pursuant to Rule 7.1(a)(2) of the Local Rules of the United States District Court for the District of Massachusetts, I conferred with Carolyn A. Crowley, counsel for Plaintiffs, regarding the issues raised in Defendants' Motion, and Attorney Crowley informed me that Plaintiffs oppose the Motion.

/s/ Jaclyn M. Metzinger

Jaclyn M. Metzinger (admitted *pro hac vice*)

CERTIFICATE OF SERVICE

I, Christopher R. Howe, counsel for Defendants, hereby certify that on December 15, 2021, the foregoing Motion to Dismiss was electronically filed with the Court using the Court's electronic filing system (ECF), which will send notice of such filing to all counsel of record. The foregoing document is also available for viewing and/or downloading from ECF. I also served a copy of the foregoing Motion to Dismiss email on all parties of record.

/s/ Christopher R. Howe

Christopher R. Howe